

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WILLIAM SHORT,

Plaintiff,

CIVIL ACTION NO. 09-CV-12323

vs.

DISTRICT JUDGE PATRICK J. DUGGAN

**SHERIFF DAN HINES, SGT.
WALKER, LT. CARMONEY,
OFFICER WICKHAM, OFFICER
BRITTIN, OFFICER WELTER, OFFICER
KELLENBERGER, RHONDA SCHULTZ,
NANCY YIRKU, JACKIE COX, MICHAEL
BURGESS, CARRIE DASH, COORDINATED
CARE PLLC, and JOHN DOE,**

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

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REPORT AND RECOMMENDATION

I. RECOMMENDATION: This Court recommends that Defendant Welter be dismissed from this action pursuant to Federal Rule of Civil Procedure 4(m).

II. REPORT:

Plaintiff filed the instant complaint on June 16, 2009. (Docket no. 1). He subsequently filed an amended complaint on October 8, 2009. (Docket no. 20). Because over 120 days had passed without Plaintiff serving Defendant Welter and other Defendants, the Court issued a show cause order. (Docket no. 29). Plaintiff responded stating that the Defendants have been served with process. (Docket no. 33). Defendants also filed a response to the show cause order stating that Plaintiff served a copy of the summons and complaint on Defendant Welter at the Jackson County

Jail on January 11, 2010. (Docket nos. 34, 35). However, because Defendant Welter is no longer employed with Jackson County Jail, service could not be effected. (Docket no. 35). Since Plaintiff made a reasonable effort to serve Defendant Welter, the Court found good cause for extending the time for service. Thus, on April 19, 2010 the Court entered an order granting Plaintiff an additional forty-five days in which to serve Defendant Welter. (Docket no. 38).

On January 18, 2011 the Court issued a second show cause order directing Plaintiff to show cause on or before February 1, 2011 why Defendant Welter should not be dismissed pursuant to Federal Rule of Civil Procedure 4m. (Docket no. 52). Plaintiff failed to respond to the show cause order. At this time an executed return of service against Defendant Welter has not been filed and no appearance has been made on behalf of Defendant Welter.

Federal Rule of Civil Procedure 4(m) provides that if a defendant is not served within 120 days after the complaint is filed, the court must dismiss the action without prejudice against that defendant or order that service be made within a specified time. Fed.R.Civ.P. 4(m). Plaintiff has not served Defendant Welter within the time allowed under Rule 4(m) or within the extension provided to him by the Court. By failing to respond to the Court's January 18, 2011 order to show cause, Plaintiff has failed to show cause why this Defendant should not be dismissed from this action. Accordingly, Defendant Welter should be dismissed from this lawsuit without prejudice.

III. NOTICE TO PARTIES REGARDING OBJECTIONS:

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of*

Health & Human Servs., 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as "Objection #1," "Objection #2," etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than fourteen days after service of an objection, the opposing party must file a concise response proportionate to the objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as "Response to Objection #1," "Response to Objection #2," etc.

Dated: May 27, 2011

s/ Mona K. Majzoub
 MONA K. MAJZOUB
 UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Report and Recommendation was served upon William Short and Counsel of Record on this date.

Dated: May 27, 2011

s/ Lisa C. Bartlett
 Case Manager